87-1844

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

CASE _____

SYLVIA BEHAR,

PETITIONER,

VS.

SOUTHEAST BANK TRUST CO., N.A.
Co-Trustee and other Co-Trustees
of the ESTATE OF ALBERTO BEHAR,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

SYLVIA BEHAR,
PETITIONER
45 E. RIVO ALTO DRIVE
MIAMI BEACH, FLORIDA 33139
Telephone: (305) 673-4384

QUESTION PRESENTED FOR REVIEW

WHETHER A DISMISSAL OF CAUSE INVOLVING FRAUD AND JURISDICTIONAL ERROR WILL RESULT IN THE DEPRIVATION OF PROPERTY IN VIOLATION OF CONSTITUTIONAL RIGHTS OF DUE PROCESS OF LAW.

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CASES

Jackson V. Travelers Ins. 403 F. Supp. 986

Janke Const. V. Vulcan 527 F. 2D 772

Parrot V. Taylor 101 S. CT. 1908

Holl V. Talcott 191 SO. 2D 41

OPINIONS BELOW

On February 10, 1988 the Supreme Court denied certiorari to review Third District Court of Appeals Case 87-1559.

JURISDICTION

The case for review in the Supreme Court is a civil case. Jurisdiction is invoked under Supreme Court Rule 17B and C.

CONSTITUTIONAL PROVISION INVOLVED

Civil Rights U.S.C. 43-1983, U.S. Const. Amend. XIV, "No person shall be deprived of life, liberty, and property without due process of law."

STATEMENT OF THE CASE

PETITIONER filed a lawsuit in Dade County, Florida Case # 84-12065. Trial court on April 3, 1984 involving a fraudulent settlement agreement signed in trial court by PETITIONER on November 1979, unrepresented by counsel with all interested parties in the Alberto Behar estate, the amount involved was around one million dollars. PETITIONER requests clear title of family home and $200,000 - in punitive and compensatory damages.

The fraud derives from a jurisdictional error in the settlement agreement. Jurisdiction after husband's demise in a divorce action, according to the law, was in Probate Court, not in the Trial Court wherein contract was signed, which makes the agreement defective and void.

Trail Judge ignored the jurisdictional

error therein, and unanswered interrogatories, and erroneously entered a summary judgement against the PETITIONER stating awards in agreement are correct and total.

Third District of Appeal affirmed the Lower Court (A-) and base their ruling in Case 374 SO. 2D 572 Behar V. Southeast which is the divorce appeal it is contradictory and controversial.

The case was timely appealed to the Sup. Court of Florida, jurisdiction denied on February 10, 1988.

As background for case 374 SO. 2D 572, Supra Behar V. Southeast Bank PETITIONER alleges:

Trial Judge bifurcated a divorce action of September 1978, between PETITIONER and millionaire husband Alberto Behar, on the husbands claim, granting the dissolution of

marriage and postponing twice the hearing for property rights, with full knowledge that the husband was dying of cancer with a short time left to live. He died on January 1979, before any hearing for property rights took place. This malicious premeditated court action caused all evil problems against PETITIONER, and cost more than $300,000 unnecessary attorneys fees.

PETITIONER was deprived, through false testimonies by paid witnesses, of her only son's custody, incompetent George Behar - the only beneficiary of his father's estate. His guardian's first action was to lock him up like a prisoner for five years in a state mental hospital. George Behar died in June 1985 of asphyxiation or strangulation at the age of 24 while tied with leather straps on his arms and legs and locked up in an empty room. It looks like a

gangster style murder. A paid job from a person that can profit from his death. The case clearly reflects the deterioration of the Judicial system in Florida.

The PETITIONER came from Cuba in 1960 to this great country expecting Justice. She could now lose all the savings she brought over, which she invested in the family home, and most tragic of all is the irreplaceable loss she has suffered of her only son's life.

REASONS FOR GRANTING THE WRIT

PETITIONER's civil and constitutional rights of due process of law as mandated by the Fourteenth Amend. U.S. Const. were violated in the State and its Appellate Courts resulting in suffering and deprivation of property rights, as well as denial to a fair trial to the PETITIONER.

42 U.S.C. 1983 grants jurisdiction to enforce violation of U.S. Amend XIV, wherein State involvement exists and provides redress for deprivation of rights.

Trial Judges rulings in favor of attorneys for RESPONDENTS who are 2nd CO-TRUSTEES, acting besides SOUTHEAST BANK, are part of a conspiracy to control an estate of one million dollars.

These "gentlemen" former attorneys for divorce action Case 374 SO. 2D Supra prepared the fraudulent agreement.

To deceive PETITIONER to dismiss all her Appeals and Claims against the Behar estate and evade estate taxes using the PETITIONER's name. Awards in settlement agreement of $150,000 cash money and half of the husband's interest in the family home are as a charge against the estate. Trial Court did not specifically reserve jurisdiction for that purpose. Therefore jurisdiction was lost in Trial Court after her husband's death. Jurisdiction was in the Probate.

The agreement is not a private contract and it is part of a divorce action. It was signed and approved by Trial Judge. It is a State action, within the scope of rights secured by U.S. Const. Trial Judge entered a summary against the PETITIONER wherein genuine issues of material facts exist, which are jurisdictional error in the

settlement agreement, which makes the contract void. There were also unanswered interrogatories, which is contrary to the principles of law enacted under case Toll V. Talcott 191 SO. 2D 41. The Toll V. Talcott case is a medical malpractice. The PETITIONER's case is a legal malpractice. Both are in the professional field or practice.

Trial Judge violated PETITIONER's rights of due process denying the opportunity to grant the PETITIONER to be heard at a meaningful time and a meaningful manner - necessary elements of due process. Parret V. Taylor 101 Sup. Ct. 1908 deprives PETITIONER of her rights to a fair trial which will result in deprivation of her property without due process of law.

PETITIONER invokes the doctrine of Equitable Estoppel pursuant federal rule of

Civil Proc. 8C and takes authority of cases Jackson V. Travelers 403 Fed. Supp. 986 and Janke Const. V. Vulcan 527.

PETITIONER contends the principles of law protecting her by the Fourteenth Amend. U.S. Const. are violated if the law is administered with an evil eye and unqualified hands thus making unjust and illegal discrimination between people in similar circumstances. This is part of the Equal Protection Clause enforced under Civil Rights 42 U.S.C. - 1983.

The Appellate Court's decision against the PETITIONER is in direct contradiction to Case Holl V. Talcot 191 SO. 2D Supra. The Appellate Court's opinion is based on Case 374 SO.2D 572. It is contradictory and controversial because the Hon. Judges affirm the Lower Court Order which state that all awards in the are correct, including the 100

percent full title of the Family home. They cite the case 374 SO. 2D SUPRA which is negative against the PETITIONER and deals with the divorce decree improperly granted against the PETITIONER. It does not include any settlement signed by the PETITIONER before her husbands death. Issues raised in the PETITIONER's appeal were not ruled on in case 374 SO 2D Supra. (Emphasis added)

Supreme Court of Florida Denied jurisdiction of case 71.413, which is the case that is up for review in the Hon. Court.

CONCLUSION

In view of the importance of facts, consequences, and foregoing reasons the PETITIONER submits that a writ of Certiorari should be issued to review the judgement of the Sup. Court of Florida. Pursuant to rule Sup. Ct. 17 B-C.

The PETITIONER requests an injunction to stop future attorneys fees against the PETITIONER. Also, clear title of the family home located at 45 E. Rivo Alto Drive, Miami Beach as stipulated in Court. Lastly, indemnification and damages of $200,000.00.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was mailed to Nelson & Feldman at 1135 96th Street, Kane Concourse, Bay Harbor Islands.
On this day the 9th day of May, 1988.

Sylvia Behar

SYLVIA BEHAR, PETITIONER
45 E. Rivo Alto Drive
Miami Beach, Florida 33139
Phone: (305) 673-4384

IN THE SUPREME COURT OF THE UNITED STATES

SYLVIA BEHAR,

PETITIONER,

VS.

SOUTHEAST BANK TRUST CO., N.A.
Personal Representative of the
ESTATE OF ALBERTO BEHAR,

RESPONDENT.

APPENDIX

SYLVIA BEHAR,
PETITIONER.

BT: SYLVIA BEHAR,
PETITIONER
45 E. RIVO ALTO DRIVE
MIAMI BEACH, FLORIDA 33139

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 84-12065

FINAL SUMMARY JUDGEMENT

SRS DISPOSITION NO. 02

SYLVIA BEHAR,

Plaintiff,

vs.

SOUTHEAST BANK TRUST CO., N.A., personal Rep. AND TRUSTEES OF THE ALBERTO BEHAR ESTATE,

Defendants.

_____/

This cause came before me upon the motion of the Respondent, Southeast Bank Trust Co., N.A., as testamentary trustee under the Will of Alberto Behar, deceased; together with the first and second amendments thereto.

The Court has considered all of the pleadings, affidavits, exhibits and other

contents of the court file, and has further considered the argument of counsel for Respondent and the argument of Petitioner.

Examination of the foregoing discloses the following:

a) That 100% of the title to the real property referred to in the Complaint, has heretofore vested in the Petitioner, Sylvia Behar;

b) That there is on deposit in the Registry of the Clerk of this Court, through the Probate division thereof, the sum of $150,000.00, which Plaintiff is entitled to upon her request, pursuant to a settlement heretofore entered into by her and pursuant to an Order of a Circuit Judge of the Probate Division of this Court, entered in connection therewith;

c) That, subject to the foregoing, there is no genuine issue as to any material fact.

Accordingly, and the Court being fully advised, it is ORDERED AND ADJUDGED as follows:

1) That with respect to the following described real property in Dade County, Florida, being the residence of Plaintiff, to-wit:

> An undivided one-half (1/2) interest as tenants in common in RIVO ALTO AMENDED, beginning at the Northwest corner of Lot 6, Eastly to bulkhead, Southeast to point 8.02 feet North of Southeast corner, according to the Plat thereof as recorded in Plat Book 7, of Page 74, of the Public Records of Dade County, Florida.

That the Respondent southeast Bank Trust Co., N.A. as Trustee under the Will of Alberto Behar, deceased, shall execute and deliver to the Plaintiff, Sylvia Behar, a Quit Claim Deed, in her favor, as to such property.

2) That with respect to the said $150,000.00 held in the Registry of the Clerk of this Court, through the Probate

Division thereof, the Plaintiff is entitled to receive such monies and any accrued interest thereon, pursuant to the foregoing, upon her request.

3) That except for the foregoing, Summary Judgement is herewith entered in favor of the Respondent, Southeast Bank Trust Co., N.A. and against the Petitioner, Sylvia Behar.

DONE AND ORDERED at the Courthouse, Miami, Dade County, Florida, this 7th day of January, 1987.

Michael H. Salmon

CIRCUIT COURT JUDGE

Copies supplied to:

Counsel for Respondent and
to Petitioner

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1987

**

** CASE NO. 87-296

**

SYLVIA BEHAR,

Appellant,

vs.

SOUTHEAST BANK TRUST CO., N.A.,
TESTAMENTARY TRUSTEE UNDER THE
WILL OF ALBERTO BEHAR, deceased,

Appellee.

Opinion filed September 29, 1987.

An Appeal from the Circuit Court for Dade County, Michael Salmon, Judge.

Sylvia Behar, in Proper Person.

Nelson & Feldman and Thedore R. Nelson, for Appellee.

Before HENDRY and DANIEL S. PEARSON and FURGUSON, JJ.

PER CURIAM.

The issues raised in this appeal were decided in prior appeals to this court. See, e.g., Behar v. Southeast Banks Trust Co., 374 So. 2d 572 (Fla. 3d DCA 1979), cert. denied, 379 So.2d 202 (Fla. 1980). Further, the trial court has retained jurisdiction to enforce its judgement as to the disposition of property.

Affirmed.